

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

January 10, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 29, 2005

Case Number: TSO-0273

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and was granted a DOE access authorization in 1981. In December 2004, the individual submitted an Incident Report concerning a failed random breathalyzer test administered by his employer. In December 2004, the DOE conducted a Personnel Security Interview with the individual (the 2004 PSI). In addition, the individual was evaluated in January 2005 by a DOE-consultant psychiatrist (the DOE-consultant psychiatrist), who issued a report containing his conclusions and observations.

In June 2005, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In this letter, the Manager states that the individual's behavior has raised security concerns under Sections 710.8 (h), (j) and (l) of the regulations governing eligibility for access to classified material. 1/ Specifically,

1/ At a November 2, 2005 conference call in this proceeding, the
(continued...)

with respect to Criteria (h) and (j), the Operations Office finds that the DOE-consultant psychiatrist diagnosed the individual as meeting the criteria for "Substance Dependence, Alcohol Without Physiological Dependence, Active," (hereinafter Alcohol Dependence) found in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition (DSM-IV TR)* . The Notification Letter also refers to the following alcohol related incidents involving the individual:

1. On December 13, 2004, he failed a random breathalyzer test administered by his employer, with a blood alcohol concentration registering .065 and .050. He states that he consumed six to ten beers and three to four glasses of wine the day before the test;
2. On July 17, 1980, he was arrested and charged with Driving While Intoxicated;
3. On May 16, 1977, he was arrested for Disturbing the Peace, Reckless Driving, Resisting Arrest, and Property Damage.
4. On April 24, 1976, he was arrested for Driving With More than One Percent of Alcohol; and
5. On May 14, 1975, he was arrested for Petty Larceny.

The individual requested a hearing (hereinafter "the Hearing") to respond to the concerns raised in the Notification Letter.

The requested hearing in this matter was convened in November 2005 (hereinafter the "Hearing"). At the Hearing, the individual did not contest the DOE-consultant psychiatrist's diagnosis of alcohol dependence. Accordingly, I find that the individual suffers from alcohol dependence subject to Criteria (h) and (j). The testimony at the Hearing focused chiefly on the individual's efforts to mitigate the concerns raised by this diagnosis through abstinence from alcohol and recovery activities.

II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R.

1/(...continued)

counsel for the DOE area office stated that the DOE had dropped the Section 710.8(1) security concerns listed in the Notification Letter. At the hearing convened in this matter in November 2005, the DOE counsel confirmed this decision. Hearing Transcript (TR) at 10-11. Accordingly, my determination will not address the Section 710.8(1) concerns presented in the Notification Letter.

Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b),(c) and (d).

A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we

generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

B. Basis for the Hearing Officer's Decision

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. HEARING TESTIMONY

At the Hearing, testimony was received from ten persons. The DOE presented the testimony of the DOE-consultant psychiatrist. 2/ The individual, who was represented by counsel, testified and presented the testimony of a psychiatrist, 3/ his wife, an acquaintance from his Alcoholics Anonymous (AA) group, his supervisor, a co-worker, a co-worker and social friend, a longtime friend of the individual and his wife, and a longtime friend who lives in another state.

2/ As indicated by the testimony of the DOE-consultant psychiatrist (TR at 17-18), he clearly qualifies as an expert witness in the area of addiction psychiatry.

3/ As indicated by his testimony (TR at 70-73) and by his curriculum vitae (Individual's Hearing Exhibit 2), the individual's psychiatrist qualifies as an expert witness in the area of addiction psychiatry.

A. *The DOE-Consultant Psychiatrist*

The DOE-consultant psychiatrist testified that in January 2005 he evaluated the individual for alcohol problems. He stated that the individual told him that in the years from 2000 until December of 2004, he typically would consume alcohol four or five days a week, and that he would generally consume five beers in a day, but sometimes as many as eight to ten beers in a day. TR at 24.

He told me that when he comes home from work, he . . . starts drinking at 7:30 or 8:00 p.m. He said that he always eats dinner at 10:00 p.m. and goes to sleep at midnight. He said that he drinks his beer before he starts dinner and then he drinks wine with dinner.

TR at 26. The DOE-consultant psychiatrist concluded that this information is very strong evidence the individual has been drinking habitually to excess for several years. TR at 26. The DOE-consultant psychiatrist estimated that in the year prior to his December 2004 alcohol test, the individual was intoxicated approximately 175 times. TR at 32. He stated that this nightly level of alcohol consumption did not indicate that the individual would be legally intoxicated when he arrived for work the next day. TR at 36.

In his February 2005 Report to the DOE, the DOE-consultant psychiatrist also concluded that the individual is alcohol dependent because he met the *DSM-IV* TR criteria three, four, five and six for substance dependence, alcohol. TR at 37. He stated that he found indications that the individual was "trying to control his drinking by having these little rules about what nights of the week that he drinks," which he concluded was

weak evidence for criterion four, which says, 'A persistent desire or unsuccessful effort to cut down or control [alcohol consumption].'

TR at 41. He also calculated that the individual spent a substantial portion of time each week consuming alcohol which meets criterion five, and that he routinely exceeds his own rule of drinking no more than one beer an hour, which meets criteria three and four. Finally, the DOE-consultant psychiatrist cites the fact that the individual's employment has been adversely affected by the loss of his access authorization as evidence that beginning in December 2004, he also met criterion six for alcohol dependence. TR at 41-51.

On the issue of whether the individual has shown adequate evidence of rehabilitation or reformation, the DOE-consultant psychiatrist stated that in his testimony he was using a definition of "adequate evidence of rehabilitation" as requiring a showing that the risk of relapse will be only five or ten percent over the next five years. TR at 55. He then discussed scientific studies assessing the probability of relapse after varying periods of sobriety and concluded that for alcohol dependence with this kind of history, the minimum period of sobriety needed to demonstrate a risk of relapse of less than 10 percent is two years of sobriety. TR at 60. He said that this minimum period of two years presumed that the individual was actively involved in AA or a similar program. Otherwise, he would require the individual to maintain sobriety for three years to demonstrate reformation. TR at 61.

B. The Individual's Psychiatrist

The individual's Psychiatrist stated that the individual first consulted with him in March 2004, and that he has seen the individual a total of seven times. He stated that on two of these consultations, the individual's legal counsel also was present. TR at 74. He testified that after evaluating the individual, he concluded that the individual has

some significant problem with alcohol, it's not a trivial problem, it's an important problem, and it's important for him to pay attention to it . . .

TR at 78-79. He agreed with the DOE-consultant psychiatrist's finding that the individual was drinking alcohol habitually to excess in the year before his December 2004 alcohol test. TR at 93. However, he added that

I just want to be very careful to say that [the individual's] habit of drinking I think was a habit. It was not a compulsion, it wasn't a drive, it wasn't a necessity, it wasn't an addiction, it was a habit.

Id. He stated that he did not want to "argue about whether it's dependency or addiction or not." TR at 79. He explained that people with alcohol problems fall somewhere on "the customary bell-shaped curve" of greater or lesser alcohol problems, and he believed that the individual's place on this curve was at just above or just below the cut-off point for alcohol dependence. TR at 78.

The individual's psychiatrist testified that when the individual first consulted with him, they "had some debate about what is the true nature of his problem." TR at 80. He stated that the individual has made progress in recognizing his problem with alcohol.

Over the time that I have known [the individual], I think he has come to agree that he probably does have a significant alcohol problem and that he does need to do something about it, and what he has told me and what he has done is stop drinking.

TR at 81. He also noted that the individual's ability to immediately stop drinking is a very positive sign.

One of the things I want to point out is that he stopped drinking when this incident happened. He also had stopped drinking at various other times in the past, when he was required to because of being on call for his work and at other points. The ease with which he stopped drinking was important to me in terms of trying to assess what is adequate rehabilitation and reformation.

TR at 81. The individual's psychiatrist testified that he does not have a two years of sobriety "standard" for rehabilitation from alcohol dependence. Instead, he tries to assess the most likely outcome in a particular situation. He concluded that the individual's ongoing sobriety and participation in AA combined with other factors to support a finding of rehabilitation.

With somebody like [the individual], who has a lot to lose, and who has confronted the issue with some vigor and honesty and some candor, and gotten to the place that I think he's at right now, and the fact added to that he has been not drinking since this happened, makes me feel that he has shown adequate reformation and rehabilitation.

TR at 82. He added that the individual's participation in AA and other alcohol related programs has reinforced the individual's initial decision to abstain from alcohol. TR at 100.

The individual's psychiatrist testified that the individual's eleven months of sobriety since his December 2004 alcohol test was adequate to demonstrate rehabilitation in his particular situation, while for other people diagnosed with alcohol dependence, eleven months of sobriety would not be adequate. TR at 101-102. In this

regard, he stated that a significant factor in this assessment was that the individual had demonstrated significantly less loss of control to alcohol than most individuals diagnosed with alcohol dependence.

I'm just saying that when I work with people clinically, somebody who has had a problem like [the individual] has had at work and continues drinking, and then has another problem and continues drinking, and then has another problem and continues drinking, and I've had plenty of people like that, are more addicted, have more loss of control. The term alcoholism fits those people - or progressed alcoholism fits those people much more significantly. And the only reason why this is important in this case is because we're talking about rehabilitation and reformation and what does it take to be adequately rehabilitated and reformed.

If [the individual] had done this over and over again, what he's done so far would not be adequate [rehabilitation], but because he did it once in recent years, had a problem like this, and has stopped drinking immediately, and done so with relative ease, I think that's one part of why I think he has adequate reformation and rehabilitation.

TR at 95-96.

C. The Individual

The individual testified that after he failed the DOE alcohol test on December 13, 2004, his DOE contractor employer recommended that he see the staff psychologist, who he continues to consult with every other week. He stated that on the recommendation of the staff psychologist, he enrolled in an intensive outpatient alcohol care program that met three nights a week at a local hospital. This program began on December 27, 2004 and lasted for six weeks. Immediately after this program ended, in February 2005, the individual stated that he began attending AA meetings three days a week. He also began attending weekly meetings of a national program called Self-Management and Recovery Treatment (SMART). At the request of his staff psychologist, he also receives counseling every two or three weeks from an addiction counselor. TR at 181-186. In September, he stopped attending SMART in order to attend vocational classes, and is now attending AA four times a week. TR at 183.

The individual testified that he believes that he consumed more alcohol than usual the night before his December 13, 2004 alcohol test because he was attempting to quit smoking.

I was quitting smoking that week, I was on about the fifth or sixth day of not smoking, and . . . my behavior gets really kind of erratic when I do quit. This is the third time that I've tried to quit smoking. I quit once in '96, and once in '98, and I was quitting this time, and I know that I used alcohol for a tobacco substitute, I substitute beer for cigarettes when I quit smoking, and that's what I think happened.

TR at 195. The individual testified that he resumed smoking the day after he failed his alcohol test in December 2004, and that he continues to smoke. TR at 213. He stated that quitting drinking is much easier for him than quitting smoking. TR at 217.

The individual testified that he believes that he never revealed classified information while he was intoxicated. TR at 196. He stated that he has no intention of drinking alcohol again, even if he loses his job with the DOE contractor. He stated that his participation in AA and SMART makes him realize how alcohol destroys lives, and that he won't drink again because

I don't want that. I don't want to lose any more than I've already lost.

TR at 200. The individual stated that he has experienced the urge to drink on several occasions, usually when he was in the habit of drinking after completing a task such as planting his garden or raking leaves. TR at 203. He stated that his wife continues to drink alcohol, but that he is not bothered by that. *Id.* He stated that since his failed alcohol test in December 2004, he has been too busy to socialize frequently with the friends that he and his wife used to entertain and drink with on the weekends. TR at 205-208. He stated that his wife has never complained about his drinking, and "still maintains that I did not have a problem, as far as she's concerned." TR at 217.

The individual testified that he is working on the fifth step in AA. He described his progress through the first four steps, and also described the remaining steps in the program. TR at 208-212. While he acknowledges that he still experiences the urge to consume alcohol, he asserts that he has made the decision to quit drinking.

I fully admit that I have a problem with alcohol, I am an alcoholic, so I can't drink.

TR at 222.

The individual testified that on January 12, 2005, he entered into an agreement with his DOE contractor employer not to consume alcohol and has submitted to random alcohol testing without incident. See DOE Exhibit 13. TR at 218-221.

The individual stated that even if his access authorization is restored, he does not intend to reapply for certification in the Human Reliability Program (HRP) because it is not necessary for his job. TR at 223.

There is really no reason for me to have that kind of certification, nor would I think it would be fair to put the Department of Energy in the position of having to make the decision whether or not to give me that kind of certification back.

TR at 225.

D. The Individual's Wife

The individual's wife testified that she has been married to the individual for more than twenty years. She stated that she is confident that the individual has had no alcohol to drink since the day before his failed alcohol test in December 2004. When asked how she could know that, she replied

Well, we've known each other for a long time, so I think I could tell, and he's always at home, except when he's at work or AA or SMART or his therapists or school. So I think I could tell if he had any.

TR at 155. She stated that when the individual used to drink alcohol, he never revealed any classified information to her. TR at 157. She stated that she keeps wine and beer in their home, that she drinks wine a couple times a week, and that she keeps the beer on hand for entertaining friends. TR at 159. She stated that she tries not to drink at all around the individual, but that every once in a while she will do so. TR at 160. She stated that she asked the individual if he wanted her to stop drinking, and he replied "no, that wasn't necessary." TR at 162.

E. The Individuals AA Group Acquaintance

The individual's AA Group acquaintance testified that he has been attending AA meetings for almost eleven years. He stated that the individual asked him to testify on his behalf because the individual's sponsor is a schoolteacher who is unable to attend meetings or receive phone calls during the school day. TR at 111-12.

The individual's AA Group acquaintance testified that the individual began attending AA meetings in February 2005 and that he sees the individual at these meeting about three times a week. TR at 112-113. He stated that the individual actively participates in the AA meetings in a good faith manner. He added that at first, the individual greeted the group by saying "I'm happy to be here", but that now he uses the phrase "I'm an alcoholic." TR at 116. He stated that the individual is attentive during the AA meetings, often takes notes, and that he is working the steps of AA. TR at 117. He stated that based on his experience in the program, he thought that the individual had a very good commitment to sobriety and that he was not likely to relapse. TR at 117.

F. The Individual's Supervisor

The individual's supervisor testified that he has worked for the DOE contractor for more than twenty-five years, and has worked with the individual for fifteen years. TR at 127-128. He stated that he offered the individual a position in his department in 2001, and has been in continuous contact with him since then. TR at 129. He stated that on the morning in December 2004 when the individual failed his alcohol test, the individual reported to work at his usual time and informed him that he was going to the medical unit to be tested for alcohol under the HRP. TR at 130. The supervisor stated that he was quite close to the individual during this conversation, and that he detected no sign of alcohol use. TR at 131. He testified that the individual was in the HRP program because "he was supporting an activity from his previous job" and that the individual is no longer in that program. TR at 134.

The individual's supervisor described him as a good engineer:

He's sensitive, dedicated, understands what's going on.
I've never had any question about his reliability. . . .
[The individual] is so closed-mouth about classified.
It's not an issue at all. Reliable, dependable, engaged.

TR at 135. He testified that he has not worked with the individual on a day-to-day basis since the December 2004 incident because of the individual's uncleared status. The individual has told him that he is involved with the DOE's Employee Assistance Program and that he has not consumed alcohol since the incident. TR at 141-142.

G. The Individual's Coworker

The individual's coworker testified that he has known the individual for most of the sixteen years that he has worked for the DOE contractor. TR at 164. He stated that since 2001 he has worked with the individual on a day to day basis, and that they have traveled together on two week long business trips. He described the individual as a "very conscientious and intense person", whose work is one of the most important things in his life. TR at 165. He stated that he never observed the individual drink excessively when they were traveling together. TR at 166. He stated that he has not observed the individual consume alcohol since December 2004. TR at 169.

H. The Individual's Coworker and Social Friend

The individual's coworker and social friend testified that he has known the individual for about seven years and worked with him from 1998 until 2001. TR at 170. From about 2001 until November 2004, he and the individual studied a foreign language by making weekly visits to an immigrant family. TR at 171. He stated that they never consumed alcohol during these visits. TR at 175. He stated that he now sees the individual just a few times a year. TR at 172. He stated that he has never been in a situation where he observed the individual consume alcohol. TR at 173. He described the individual as very conscientious concerning the handling of secure data. TR at 172.

I. The Individual's Longtime Friend

The individual's longtime friend testified that he had a career in law enforcement and now is retired on a disability. TR at 144-145. He stated that he has known the individual since about 1982 and that he and his former wife socialized frequently with the individual and his wife during the period from 1982 until 1993. TR at 145-146. He states that since 2000, he had social contact with the individual and his wife no more than two or three times a month, and that now the individual occasionally visits him after his AA meeting. TR at 147, 150. He stated that when he was with the individual and his wife prior to December 2004, everyone

consumed alcohol. He stated that friends would sometimes question the individual about his work, and that he would always reply "That's something I can't talk about." TR at 148. He stated that he recently offered the individual a beer, which he refused. TR at 149. He also stated that the individual told him that he has no intention ever to drink again. *Id.* He stated that since December 2004, he has not observed the individual consuming alcohol. TR at 153.

J. The Individual's Lifelong Friend

The individual's lifelong friend testified that he has known the individual since junior high school, and they have been good friends from age 15. He stated that he and the individual now live in different cities. TR at 229-230. He stated that they still continue to maintain close contact through yearly visits and talking on the telephone about once a month. TR at 231.

He stated that in 2005 the individual informed him of his December 2004 alcohol incident when he called to cancel his usual Spring trip to help the friend open his summer vacation cabin. The individual explained to him that he did not want to expose himself to friends drinking beer so early in his recovery. TR at 233. The lifelong friend testified that the individual had never shared any classified information with him over the years. TR at 236. He stated that he is convinced from his ongoing telephone conversations with the individual that he is maintaining his sobriety. TR at 238-239. He stated that the individual has admitted to him that he is an alcoholic. TR at 241.

K. The DOE-Consultant Psychiatrist's Additional Testimony

Following the testimony of the other witnesses, the DOE-consultant psychiatrist testified that the individual exhibited some evidence of rehabilitation by demonstrating about eleven months of abstinence and about nine months of AA participation. However, he stated that the individual failed to show that his risk of relapse in the next five years was ten percent or less.

In my opinion, [the individual's current risk of relapse] is higher than ten percent - significantly higher, at least 30, 40 percent risk of relapse in the next five years, based on my knowledge of the literature, based on the amount of rehabilitation that he's had, which is eight, nine months of AA, being on [AA] step five, that sort of thing.

TR at 250. He stated that a relapse percentage that exceeded 10 percent over the next five years indicates that the individual is not rehabilitated. He indicated that he would find the individual to have reached this 10 percent risk of relapse over the next five years

at the point that he went through all of the 12 steps of AA and that he has a minimum of two years of sobriety. That would make it twice as unlikely that he would relapse a year from now, having completed all the steps of AA.

TR at 252-253.

With regard to the individual's psychiatrist's conclusion that the individual already had demonstrated a low enough risk of relapse to be considered rehabilitated, the DOE-consultant psychiatrist stated that the individual's psychiatrist was not able to be objective in his assessment because of his ongoing doctor-patient relationship with the individual. TR at 245-246. When asked by the DOE counsel about the individual's admission that his efforts to stop smoking may have contributed to his excessive drinking the night before his December 2004 alcohol test, the DOE-consultant psychiatrist commented that the literature of alcoholism indicates that being dependent on nicotine is not a good prognostic sign for staying abstinent from alcohol. TR at 248. He added that this was only one of several factors involved in assessing the individual's risk of relapse

So it is a significant factor, . . . a bad prognosis, but he has many good prognostic signs - he has a job, he has a family, a wife, a support system, that sort of thing. Those are all good prognostic factors, so they kind of cancel out.

TR at 259. He stated that the individual did not need to quit smoking in order to demonstrate rehabilitation from alcohol dependence. TR at 298.

IV. POST HEARING FILINGS

At the Hearing, the DOE counsel requested that the DOE-consultant psychiatrist provide him with citations to scientific studies indicating that smoking was a negative prognostic factor for rehabilitation from alcoholism. The DOE counsel submitted these citations on December 12, 2005. In a January 4, 2006 email, the individual's counsel commented that only one of these cited studies

appeared to indicate that nicotine use supports alcohol addiction, and that that study involved laboratory animals rather than people. He noted that other studies cited by the DOE-consultant psychiatrist concluded that alcoholics safely could attempt to quit smoking without jeopardizing their sobriety.

On December 22, 2005, the individual's counsel also supplemented the record by asserting that the individual had now completed a full year of abstinence from alcohol. He enclosed a letter dated November 23, 2005 from the individual's addiction counselor to the DOE contractor's staff psychologist. In that letter, the addiction counselor states that the individual has attended counseling on a regular basis, has been compliant of all that has been asked of him. The addiction counselor concluded that the individual's "prognosis is considered excellent and [he] is in full sustained remission of alcohol abuse." November 23, 2005 letter from individual's addiction counselor attached to individual's December 22, 2005 submission. The individual's counsel also enclosed a photograph of a coin that the individual received from his AA group commemorating his achievement of a full year of sobriety. In a January 6, 2002 email, the individual's counsel indicated that the individual intends to attend AA meetings at least three times a week throughout 2006, and that he has progressed to step eight in the AA program.

V. ANALYSIS

The individual believes that his twelve months of sobriety, his participation in AA meetings, and his dedication to future abstinence from alcohol fully mitigate the Criteria (h) and (j) security concerns arising from his diagnosis of alcohol dependence. For the reasons stated below, I conclude that the individual's arguments and supporting evidence concerning his rehabilitation from alcohol dependence resolve the DOE's security concerns.

The testimony at the Hearing indicated that the individual has been abstinent from alcohol since December 14, 2004, that he enrolled in an intensive outpatient alcohol care program in January 2005 which he completed in February 2005, and that he has attended either AA meetings or SMART program meetings four times a week since February 2005.

However, in their testimony at the Hearing, the DOE-consultant psychiatrist and the individual's psychiatrist disagreed concerning whether this progress by the individual constitutes rehabilitation from alcohol dependence for purposes of Part 710. In the administrative review process, it is the Hearing Officer who has

the responsibility for forming an opinion as to whether an individual with alcohol problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol diagnoses, but instead makes a case-by-case determination based on the available evidence. In making this determination, Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals. See, e.g., *Personnel Security Hearing (Case No. VSO-0027)*, 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation).

The DOE-consultant psychiatrist asserted that the individual must demonstrate a 10 percent or less likelihood of relapse in the next five years in order to demonstrate rehabilitation under Part 710. While acknowledging that the individual has made substantial progress towards rehabilitation, the DOE-consultant psychiatrist testified that his current progress is inadequate to demonstrate a 10 percent risk of relapse.

The DOE-consultant psychiatrist's estimate of the percentage likelihood that the individual will relapse clearly is within his area of medical expertise. However, establishing the percentage likelihood of relapse required to demonstrate rehabilitation is not. The question of what probability of relapse constitutes rehabilitation is properly determined by the DOE. I find that a requirement of a 10 percent or less likelihood of relapse over the next five years for this individual, who has had only very limited problems with alcohol in the last twenty five years, is too stringent. Accordingly, in this instance I decline to adopt the 10 percent risk of relapse standard for rehabilitation advocated by the DOE-consultant psychiatrist.

In his testimony, the individual's psychiatrist concluded that the individual had made sufficient progress to demonstrate rehabilitation under Part 710. He agreed with the DOE-consultant psychiatrist that the individual has a significant problem with alcohol, and was drinking habitually to excess in the year before his December 2004 alcohol test. He did not contest the DOE-consultant psychiatrist's diagnosis of the individual as alcohol dependent. However, he found that the individual's excessive drinking was not compulsive or addictive in nature, but was a habit that the individual has been able to give up with relative ease.

He stated that based on his clinical experience, the individual's ability to immediately stop drinking after his failed alcohol test

in December 2004 was a very positive sign for his ability to maintain his abstinence in the future. He stated that the individual's ability in this regard indicates less loss of control concerning alcohol than many persons diagnosed with alcohol dependence and a better prognosis for rehabilitation.

He also found that the individual was unlikely to relapse based upon his ongoing sobriety, his AA involvement, his awareness that he could lose his job if he relapses, and his honesty and candor in recognizing his alcoholism.

I agree with the findings of the individual's psychiatrist. The individual's December 2004 failed alcohol test was his sole alcohol-related incident in recent years. His ability to stop drinking and to agree to accept treatment for his alcoholism immediately after this incident indicates that he has a better prognosis for maintaining sobriety without relapsing than many alcohol dependent persons. In addition, my positive assessment of the individual's demeanor and of the evidence presented at the Hearing convince me that the individual has maintained his sobriety since December 14, 2005, that he has committed himself to sobriety by actively participating in SMART and AA meetings, and that he has demonstrated good progress in a serious and continuing effort to work through the twelve steps of the AA program. He also has shared his commitment to sobriety with his wife and friends. These positive developments are all significant factors which indicate rehabilitation and reformation from alcohol dependence.

At this time, the individual has conducted his social and recreational activities without alcohol for a full year, demonstrating that he can handle the challenges to abstinence posed by holidays, vacations and other circumstances. This convinces me that the individual's psychiatrist is correct in concluding that his risk for relapsing into alcohol use is not unacceptably high for someone holding a DOE access authorization. Accordingly, I conclude that it now is appropriate to restore the individual's access authorization.

VI. CONCLUSION

For the reasons set forth above, I find that the individual suffers from alcohol dependence subject to Criteria (h) and (j). Further, I find that this derogatory information under Criteria (h) and (j) has been mitigated by sufficient evidence of rehabilitation and reformation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has

demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: January 10, 2006